



Appeal Decision

Inquiry held on 19 & 20 January and 5 April 2016

Site visit made on 20 January 2016

by Nick Fagan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 May 2016

Appeal Ref: APP/J3720/W/15/3023047

Land south of John Taylor Way, Moreton Morrell, Warwickshire CV35 9DH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by David Wilson Homes (Mercia) Ltd against the decision of Stratford-on-Avon District Council.
 - The application Ref 14/00946/FUL, dated 1 April 2014, was refused by notice dated 23 October 2014.
 - The development proposed is a residential development of 35 dwellings including 35% affordable housing and associated works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Following the Local Planning Authority (LPA) refusal of this application a second application was made in 2015 in order to try and overcome the reasons for refusal (LPA Ref 15/02095/FUL). That application, which was for a very similar development comprising the same number of dwellings on the same site, was also refused but the appellant has requested that the plans for the second application be substituted for those originally submitted. The LPA has no objection. I agree that nobody would be prejudiced by this because the second application was also subject to full public consultation and so the revisions to the proposal would comply with the *Wheatcroft* principles¹. As such, the LPA's refusal reasons are those pertaining to 15/02095/FUL.
3. A draft S106 unilateral undertaking (UU) was given to me at the Inquiry and this was completed in the weeks following 6 April 2016 in accordance with a pre-agreed timetable. I closed the Inquiry on 20 April once I had received the signed and dated UU and the main parties' closing submissions as previously agreed. I address the UU below.

Main Issues

4. The main issues in this case are whether:
 - the proposed development would significantly harm the character and appearance of the area;

¹ As set out in the Procedural Guide: Planning Appeals – England, Annexe M

- sufficient public open space would be provided sufficiently close to the new development to meet its needs in perpetuity;
- the obligations in the UU comply with the *Community Infrastructure Levy Regulations 2010* (the CIL Regs); and
- the proposed development would be sustainable.

Reasons

Character and Appearance

5. Moreton Morrell is a village located about 3 miles south of junction 13 of the M40 and 6 miles south of Warwick, 3 miles east of Wellesbourne and 7 miles east of Stratford-on-Avon. It has a church, primary school, village hall, dental practice, recreation ground including skate park (RG), pub and bus stops giving access to limited routes and services. Immediately to the west of the village is Warwickshire College's (WC) agriculture department campus situated in the grounds of the old Moreton Hall.
6. There are a variety of dwellings of different ages and designs in the village, the oldest of which are mainly located in the conservation area in the centre of the village. In contrast the site abuts the modern suburban residential development at Chestnut Grove (CG) on the northern edge of the village. It is a triangular shaped flat field 1.1Ha in area bordered to the east by a hedge and the rear gardens of the houses in CG, to the south by a hedge and a public footpath beyond which is the RG abutting the Oak Tree Close housing development and to the north by open countryside. The site also includes a strip of land to the north of John Taylor Way/John Davis Drive (JTW/JDD), within which lies an underground liquid petroleum gas storage (LPG) compound. The proposal is to extend this compound to cater for the new housing as well as to provide a SUDS attenuation pond and plant trees in this area.
7. The LPA acknowledges that there is no in-principle objection to residential development on this site; there would be no specific harm to the local landscape and that the proposed development would be seen within the context of the modern estate development at CG; and if development was to occur in Moreton Morrell that this would be the best site for it. It accepts that there would be a neutral impact on biodiversity.²
8. Policy CS.16 of the emerging Core Strategy (ECS) cited in the Council's first refusal reason states that in Category 4 villages approximately 400 homes in total will be allocated in the plan period between 2011 and 2031, of which no more than around 8% should be provided in an individual village. Moreton Morrell is one of 19 Category 4 Local Service Villages (LSVs), Category 4 being the lowest of 4 categories classified by reference to the number and range of services within them. That is set out in emerging CS Policy CS.15 which also allows for development in such villages on sites to be identified in the Site Allocations DPD, sites identified in Neighbourhood Plans and on suitable sites within their Built-Up Area Boundary (BUAB) (where defined). Moreton Morrell does not have such a defined BUAB.

² Final Statement of Common Ground, January 2016 (SoCG), paragraphs 2.2 & 2.3

9. 8% of 400 equals 32 homes. 35 homes are proposed here but this is only just over that number. Full weight cannot be attached to these emerging CS Policies because the Examining Inspector has not published his final report into the CS and there is no certainty that this site would form a specific allocation for Moreton Morrell in the future. But these Policies do demonstrate the Council's intentions with regard to development in such Category 4 villages and I consider that the proposed development would generally be in accordance with these emerging CS Policies for the above reasons, albeit that the LPA has not indicated any specific additional housing requirement as yet in Moreton Morrell, or indeed at any other Category 4 village.
10. However, the LPA states that the scheme's design would result in a car-dominated form of development; a lack of social inclusion as a result of the clustering of the affordable housing into the 'town square' area of the site; insufficient open space in front of the proposed houses on JTW/JDD; an overly dense development compared to existing development in the locality with general lack of landscaping and incidental open space; and that these factors in combination amount to an unacceptable overdevelopment of the site significantly and demonstrably harmful to the character and appearance of the area. I consider each of these factors in turn below.
11. The appellant states that the scheme's layout creates 3 distinct character areas: the JTW/JDD homes to reflect the street patterns of the adjoining 1990s CG development, a more informal rural edge overlooking the southern footpath and a central section of smaller terraced and semi-detached houses taking its cue from the designs of some of the housing in the centre of the village.
12. It is this latter area that the LPA considers is dominated by car parking and that includes all the affordable housing rather than pepper-potting it within the proposed layout. I acknowledge that this form of perpendicular car parking in front of these dwellings is not found in Moreton Morrell but the design of the buildings is and I consider that such a layout would add some much needed variety to the scheme, which would otherwise be lacking. The set back of these houses from the adjacent dwellings would create a square which would give this part of the scheme a distinct character including by the planting of six specimen trees, allowing views of the adjacent dwellings from either end of the access road, improving the scheme's overall urban design. The design of the front elevations of these houses would successfully replicate the attractive designs of similar houses in the central older part of the village.
13. Parking directly in front of the dwellings would be overlooked and convenient to use for residents and the mass of parking could be broken up by the use of different types of surfacing material. Allocating dedicated space for refuse and recycling bins in this frontage parking area on collection days is a sensible way of dealing with this servicing issue; each dwelling would store its bins out of public view the rest of the time.
14. Whilst the houses in this central part of the site would mainly be affordable, not all of them would be. Units 3 and 4, which also form part of the layout of this square and are of the same design as the affordable homes, would be market dwellings, and it would in any case be immediately flanked by other market homes of similar designs. Given that the scheme would have 12 affordable homes out of a total of only 35 dwellings (nearly 35% or over a third) their concentration in this part of the site on a loop road, which would be used by all

- residents of the estate, would be unlikely to give rise to social exclusion and would be easier to manage for a Registered Provider. In these circumstances it is not necessary in my view to randomly pepper-pot the affordable dwellings around the site.
15. The density of the proposed scheme would not be significantly greater than that on the CG development and in general terms there is actually more open space on this scheme than in that one. In particular that proposed adjacent to the southern boundary and the extended linear open space to the north of JTW/JDD.
 16. I acknowledge that the set back of the proposed houses on JTW/JDD is less than that on the majority of the CG development fronting JTW and that the grass verge would generally be about 1m narrower. But the majority of the verge would still be over 2m wide, there would still be adequate inseting of the front of the dwellings from the footway and the general character of this northern part of the site would therefore match that of the existing CG development. The continuation of the double line of trees on the northern side of the road would also contribute strongly to this character. Furthermore there is no clearly defined regular building line for the existing houses on JTW and it is not necessary for the layout of the new houses to match the precise set back of the houses at Nos 13-21(odd) in the existing central section of JTW.
 17. In summary I agree that the proposed layout of the scheme would create 3 well designed separate character areas. The houses abutting JTW/JDD would follow the design approach of the adjacent CG development and the layout of the houses on the southern edge of the site would have a more informal rural edge and overlook the footpath, both addressing their specific contexts. Whilst the central 'town square' would not match that of the CG development and would not contain a central green open space like that at Oak Tree Close, I consider that it is well designed for the above reasons and adds welcome variety to the scheme's overall layout.
 18. For these reasons I conclude that the proposed development would not significantly harm the character and appearance of the area. It would comply with 'saved' Policy DEV1 of the Stratford on Avon Local Plan Review 1996-2011 (LP), which requires development proposals to have regard to the character and quality of the local area. It would likewise comply with emerging CS Policy CS.9 and relevant policy in the National Planning Policy Framework (NPPF), both of which require development to ensure local distinctiveness and high quality design. The development would also be in accordance with those parts of the Stratford-on-Avon District Design Guide mentioned at the Inquiry, specifically paragraphs 1.6.1, 1.7.1 and 7.2.1.

Public Open Space

19. It is agreed by the parties that there is a requirement for the proposed development to provide at least 1,753.2m² of public open space (POS) including a children's play area of at least 243.5m². This requirement derives from ECS Policy CS.24, which stipulates that in LSVs 0.75Ha of POS and 0.25Ha of children and young people's equipped play facilities per 1,000 people is required. Although the requirements are slightly higher in the existing LP Policy COM4 the LPA confirmed at the Inquiry that it seeks to meet the lesser standards in ELP Policy CS.24. That Policy states that where developments are

- of a suitable scale provision shall be made on site but it also allows suitable off-site provision.
20. From the evidence at the Inquiry and the contents of Schedule 4 of the UU it is clear that the appellant is willing to comply with this requirement by providing such an area of POS off-site elsewhere in the village. Such a proposal would be satisfactory in principle provided that the area of POS would be close enough to the new development, or 'near at hand' as the appellant puts it³.
21. However, I have concerns regarding the wording of the UU's Schedule 4. The POS land referred to in Schedule 4 (as marked in blue on Plan 1 of the UU) is the land currently used as the RG, an area of approximately 1Ha which includes the skate park, playing field and children's play equipment. That land is owned by WC and the obligation in Schedule 4 is upon WC to preserve, maintain and make available to the public this land, but only for a period of 10 years (paragraph 1).
22. After 10 years paragraph 3 of Schedule 4 would allow WC to cease the use of the RG as the POS land provided that the District Council agrees to let WC:
- 3.1 *make available in perpetuity within Moreton Morrell alternative land of an area not less than 1753.2 square metres which shall be put to use and maintained in the same manner as the Open Space Land; or*
- 3.2 *pay to the District Council the Open Space Commuted Sum; and*
- if the District Council does not agree to the options available to it under paragraphs 3.1 and 3.2 the Owner (i.e. WC) shall either (1) continue to make available the Open Space Land; or (2) provide within Moreton Morrell alternative land of a similar size and nature to the open Space land which shall be put to use and maintained in the same manner as the open Space Land; and shall do so until the expiry of fifteen years from the expiry of the ten year period referred to in paragraph 1.*
23. However, paragraph 3.1 does not specify the precise location of the POS. The evidence from the LPA and Parish Council (PC) was that there is no suitable alternative site for the POS in the village apart from the existing recreation ground. I cannot categorically affirm that to be the case. But the appellant did not specifically suggest any other suitable sites and it is clear to me that the RG is the best place for the POS required by the development because it immediately adjoins the site (apart from the public footpath between it and the site) and is already in such a use.
24. The use of the word 'or' at the end of paragraph 3.1 does not oblige WC to provide any alternative POS land and does not state the location of any such land. The Open Space Commuted Sum, although its definition on page 6 of the UU would appear to be of a sufficient financial amount in principle to allow alternative provision of POS elsewhere, is of dubious value because I agree with the LPA and PC that there is no better alternative site in Moreton Morrell for the POS required by the development to be located.
25. The last part of paragraph 3 set out above equally – by the use of the word 'or' again – allows WC the option of not continuing to provide the POS at the RG but elsewhere in the village, which is unacceptable for the above reason. In

³ Final submissions by Mr Richards on behalf of the appellant, paragraph 1.a., 20 April 2016

any case, even if WC did choose to continue to make the existing RG available (under option 1), this would only be for a further 15 years. That would mean that the POS required by the development would only be secured for a maximum period of 25 years rather than in perpetuity as it should be, because the houses in the development or their subsequent replacements will almost certainly be there for ever.

26. For these reasons the obligation as set out in Schedule 4 of the UU is unsatisfactory because it does not secure 1753.2m² of POS in perpetuity and does not specify that such space would be located 'near at hand'.
27. The appellant argues that if I find this obligation to be unacceptable a Grampian planning condition requiring this amount of POS would nevertheless be acceptable. A hand-written draft of such a condition was put to me by the appellant at the Inquiry as follows:
- No development shall commence until a scheme has been agreed with the LPA for the provision of at least 1753.2m of public open space (including at least 243.5m of children's play area) within ___m of the boundary of the site. The agreed scheme shall be implemented prior to the occupation of:*
- ___ dwellings
- ___ open market dwellings.
28. But again, as with the UU obligation, this condition does not indicate the location of the POS or that it will be provided in perpetuity. I have considered whether I could amend the above wording to specify that this amount of POS be provided on the RG in perpetuity but have decided that such an amendment would exceed that which the appellant or WC was willing to offer.
29. At opening the LPA expressed its surprise that no one from WC was attending the Inquiry. As it turned out Mr Vickery attended on behalf of WC and I was able to hear from him an update of negotiations concerning the PC's attempts to secure long term control over the RG. He confirmed what Mrs Parry from the PC had said in her evidence that the current PC lease of the RG ends on 30 September 2017. He also confirmed that WC's offer to grant the PC a 99 year lease mentioned in his letter to the appellant of 20 June 2015⁴ still stands.
30. It is clear from both sides' evidence that there is disagreement between the PC and WC about the long term future of the RG or at least the price the PC should pay for freehold or leasehold control of it. This appeal is not the forum to resolve such differences. But I am unclear why WC will not consider entering a new lease with the PC until it knows the outcome of this appeal⁵.
31. I understand from WC's second letter to the appellant on this matter dated 25 November 2015⁶ that it has no plans to close the equipped play area to members of the public on the RG, and that it is considering appointing a management company to take over its management. I acknowledge that the PC is not the only body that can manage the RG. But it has done so since 1965 and is quite content to carry on doing so. The play equipment seemed to be in

⁴ Appendix 2 of Cllr Parry's Proof

⁵ Final submissions by Mr Richards on behalf of the appellant, paragraph 1.d., 20 April 2016

⁶ Appendix SG3 to Ms Griffith's original Proof, December 2015

- reasonably good condition and so the PC appears to be competent at managing the RG. Whilst the appellant may wish a separate management company to control and maintain the RG, that should not prevent the UU or proposed Grampian condition specifying that the POS should be located on the RG, which both fail to do.
32. In theory the POS could be provided elsewhere in the village but for the above reasons the RG is the best site to provide it for users of the development. The appellant points out that additional amenity land is provided to the north of JTW/JDD but that land is separated from the development by the road and is on the very edge of the village where new tree planting is supposed to help screen the development in the landscape. The location of a children's play area on the north side of the road would make the scheme more prominent in the landscape and children using it would also have to cross the road. The existing play area at the RG would be safer because children would only have to cross the public footpath.
 33. It would also be more conveniently located for other existing and potential users if it was retained at the RG, such as for children from Oak Tree Close, and those living closer to the heart of the village. Its use by the village as a whole would help maintain community cohesion because it would remain a shared village resource, which would be less likely if it were to be located on the northern edge of the village to the north of JTW/JDD. I can see no reasons why the POS should not be located on the current RG.
 34. The RG is registered as an Asset of Community Value. The appellant argues that this secures its protection or, if it doesn't, that the LPA could protect it further. But its listing as an ACV, whilst this is a relevant consideration in determining any putative planning application made for development on the RG site, does not necessarily protect it as POS in perpetuity. The best way to protect it and secure its long term use as POS would be to do so in the UU or in a Grampian condition but, for some unknown reason, this has not been definitively done, despite WC maintaining that it is content in principle to grant a lease for the requisite amount of land on part of the RG.
 35. Although ECS Policy CS.24 allows for off-site POS provision it states that new open space will be designed to complement existing open space provision in the area and that where appropriate, improvements to the quality and/or accessibility of existing provision will be sought. That is appropriate in this case but there is no certainty that the RG will be retained as POS for the development and the wider village. CS.24 also says that it is expected that existing community facilities - of which the RG is a clear example - will be retained subject to a number of exceptions none of which apply in this case. The failure of the scheme to date to ensure that the POS required by this development is delivered at the RG and that the RG is retained for the wider village community means that it conflicts with this Policy.
 36. Because the POS is not to be provided on the site it must be delivered off-site nearby but there is no certainty that this will occur for the above reasons. The proposed development would not therefore provide a good standard of amenity for all future occupants of the development because it would lack sufficient POS, contrary to paragraph 17, bullet point 4 of the NPPF.
 37. Paragraph 70 of the NPPF also states that planning policies and decisions should plan positively for the use of shared space and community facilities,

guard against the loss of such facilities, ensure that they are able to develop and modernise in a sustainable way and ensure an integrated approach to the location of housing and such facilities. For the above reasons the proposed development would do none of these and I am mindful of Mrs Parry's comments in this regard that the PC cannot renew the play equipment on the RG given the current uncertainty about the lease.

The Planning Balance and Overall Sustainability of the Proposed Development

38. The third and final day of the Inquiry was concerned principally with a discussion about housing land supply (HLS), in particular whether the LPA could demonstrate a 5-year supply of deliverable sites.
39. The LPA's evidence is that it can demonstrate either a 5.4 years⁷ or a 5.21 years⁸ supply. But two recent appeal decisions in Stratford District⁹ cast serious doubt on whether this is in fact the case and Mr Careford in his evidence acknowledges that applying both the ECS's Main Modifications and the findings of the latter appeal decision would result in a supply of only 5.13 years. The appellant argues that 1,151 units should be deleted from the supply, which would only give a supply of 4.2 years.
40. The appellant's HLS evidence addressed the same or substantially similar issues that were considered in some detail by the Inspectors in those recent decisions; namely the number of house builders (or outlets) on each of the disputed sites, whether the sites were actually in the hands of builders rather than agents, when reserved matters permissions would be likely to be forthcoming at those sites with only outline permissions, and the extent of undischarged conditions on sites as well as other site specific issues.
41. Evidence of likely supply from many of the same sites considered in those decisions was also considered at this appeal. The Tiddington decision concluded, for instance, that sufficient numbers of homes should be deleted from the two largest sites (Long Marston Airfield and Land West of Shottery) to bring the supply to below 5 years. The evidence in this case in respect of those two sites alone confirms that to be the case now for the same reasons as set out by the Tiddington decision.
42. For these reasons I conclude that the LPA does not have a 5YHLS. Paragraph 49 of the NPPF is engaged, which means that policies for the supply of housing are not up-to-date. In turn this means that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole (the presumption in favour of sustainable development test in NPPF paragraph 14).
43. It is clear that an additional 35 dwellings on a site the LPA acknowledges as being satisfactory in principle, subject to its concerns regarding character and appearance and POS provision, would be a significant benefit taking into account the need to boost significantly the supply of housing as set out in the NPPF. Furthermore, the scheme's delivery of 12 affordable dwellings (through

⁷ Based on ECS Examining Inspector's calculations at 31 March 2016 in the Table attached to Mr Careford's Supplementary Note on 5YHLS, 1 April 2016

⁸ As set out in Mr Careford's Proof in respect of 5YHLS, February 2016

⁹ APP/J3720/W/15/3017900 & 3132950 (the Tiddington decision) dated 14 March 2016 and APP/J3720/W/15/3009042 (the Long Itchington decision) dated 29 March 2016

the UU) where there is an acknowledged backlog of unfulfilled need as well as a local and national policy prerogative to meet such need is an important added benefit. These are significant social benefits, and the delivery of these homes would also have proportionate economic benefits as acknowledged by the LPA, which attract some limited weight.

44. Although not a benefit as such, I also acknowledge that the proposed development would not result in any harm to the character or appearance of the area, including the local landscape or ecology.
45. However, set against these benefits is the proposal's failure to ensure delivery of the necessary POS. This weighs heavily against it for the reasons set out in detail above. In my view the lack of POS and the failure of the scheme to integrate it with the existing RG facilities outweighs the above benefits of the scheme and for these reasons it would not be sustainable development when assessed against the policies in the NPPF taken as a whole. Although ECS Policy CS.24 is not yet part of the development plan it is not substantially different to the existing policies on open space provision in the LP, it accords with relevant policy in the NPPF and is acknowledged by the appellant to be the relevant policy.

The Unilateral Undertaking

46. The obligations in the UU are conditional on the grant or planning permission. Since I am dismissing the appeal there is no need for me to deliberate on them any further.

Conclusion

47. For the reasons given above I conclude that the appeal should be dismissed.

Nick Fagan

INSPECTOR

Annex 1 – Appearances

Annex 2 – Documents handed in at the Inquiry

Annex 2

DOCUMENTS HANDED IN AT THE INQUIRY

1. Opening Statement on behalf of the Appellant
2. Suggested Grampian condition hand written by Appellant
3. Agreed hand written timetable following adjournment of Inquiry on 5 April
4. Schedule of Main Modifications to emerging Core Strategy, March 2016
5. Closing submissions on behalf of the LPA
6. E-mail from LPA dated 18 April in response to query from Inspector re. settlement boundary at Moreton Morrell
7. Closing submissions on behalf of the Appellant
8. Addendum to LPA's closing submissions
9. Response by Appellant to above Addendum
10. Table of sites in dispute for 5YHLS
11. Appeal decision APP/J3720/A/14/2217495 handed to me by LPA
12. Signed UU dated 15 April 2016

End of Documents List